

DERICK WEWERKA,)
)
 Plaintiff,)
)
 vs.) Case No. 4:09CV1973 CDP
)
 DON ROPER, et al.,)
)
 Defendants.)

I entered judgment in this case on November 8, 2010, dismissing plaintiff Derick Wewerka's claims under 42 U.S.C. § 1983 without prejudice. Wewerka now moves to extend the time to file his notice of appeal pursuant to Fed. R. App. P. 4(a)(5). In support of that motion, Wewerka contends that he is an inmate at a Missouri correctional facility, that he is a special-needs offender with an IQ of 70 or below, and that he only has access to the facility's law library for one hour each week.

Under Fed. R. App. P. 4(a), Wewerka was required to file his notice of appeal within thirty days after judgment was entered in this case, or December 8, 2010. However, Fed. R. App. P. 4(a)(5) allows a district court to extend the time to file a notice of appeal if “(i) a party moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) . . . the party shows excusable neglect

or good cause.” The determination of whether a party’s neglect of a deadline is excusable is “at bottom an equitable one, taking into account all relevant circumstances surrounding the party’s omission.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993); accord *Gibbons v. Untied States*, 317 F.3d 852 (8th Cir. 2003).

After reviewing his motion and the record before me, I conclude that Wewerka has satisfied the requirements set out in Fed. R. App. P 4(a)(5) by filing no later than thirty days after the deadline for doing so, and by showing good cause for his delay. *See* Fed. R. App. P. 4(a)(5).

Accordingly,

IT IS HEREBY ORDERED that plaintiff Wewerka’s motion for an extension of time [#56] is granted, and Wewerka must file his notice of appeal no later than **Thursday, January 13, 2011**.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 13th day of December, 2010.